

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
EVANSVILLE DIVISION**

UNITED STATES OF AMERICA, <i>ex rel.</i>	)	
TRACY CONROY, PAMELA SCHENK,	)	
and LISA WILSON,	)	
	)	
Plaintiffs-Relators,	)	Case No. 3:12- cv-00051-RLY-DML
	)	
vs.	)	
	)	
SELECT MEDICAL CORPORATION and	)	
SELECT SPECIALTY HOSPITAL-	)	
EVANSVILLE, INC., SELECT	)	
EMPLOYMENT SERVICES, INC. and DR	)	
RICHARD SLOAN,	)	
	)	
Defendants.	)	
	)	

**DEFENDANTS’ UNOPPOSED MOTION TO AMEND THE BRIEFING SCHEDULE**

Defendants Select Medical Corporation and Select Specialty Hospital-Evansville, Inc., Select Employment Services, Inc. (collectively, “Select”), and Defendant Dr. Richard Sloan (the Select defendants and Dr. Sloan are collectively referenced for purposes of this Motion as “Defendants”)<sup>1</sup>, jointly request that the Court amend the schedule and deadlines for briefing on Defendants’ Motions to Dismiss the Second Amended Complaint. Defendants jointly request this amendment of the current briefing schedule to allow for appropriate consideration, by the parties and the Court, of a novel issue raised for the first time by the Notice of the United States in Opposition to Dismissal of Certain Claims on the Grounds of the Public Disclosure Bar (ECF

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<sup>1</sup> Although the United States has elected not to intervene in this matter, it has reviewed and agreed to the relief and proposed deadlines requested by this Motion.

No. 144), and by Relators' Response in Opposition to Defendants' Motions to Dismiss the Second Amended Complaint (ECF No. 145), for the reasons set forth below.

1. On July 27, 2015, the Court entered a Case Management Plan that included, among other things, a schedule for briefing on Defendants' Motions to Dismiss the Second Amended Complaint. ECF No. 127 at 4.

2. In accordance with that schedule, Defendants filed their Motions to Dismiss on December 18, 2015. ECF Nos. 139 & 141 (Select's Motion and Memorandum); ECF Nos. 140 & 142 (Dr. Sloan's Motion and Memorandum). Defendants' briefs, among other things, argued that the Second Amended Complaint should be dismissed pursuant to the False Claims Act's "public disclosure bar," 31 U.S.C. § 3730(e)(4). ECF No. 141 at 5-18 (Select brief); ECF No. 142 at 2 n.1 (Dr. Sloan brief).

3. On February 1, 2016, the United States filed a Notice of Opposition to Dismissal of Certain Claims on the Grounds of the Public Disclosure Bar ("Notice"). ECF No. 144. The Notice references the statutory text of the public disclosure bar and asserts that "the court may not dismiss the action on the ground of public disclosure" if the United States objects to such dismissal. ECF No. 144 at 2. The Notice further asserts that Defendants' Motions to Dismiss should be denied on the basis of that filing for claims accruing on and after March 23, 2010. *Id.*

4. On the same date, Relators timely filed their opposition to Defendants' Motions to Dismiss. ECF No. 145. Similar to the United States' Notice, Relators' Opposition brief argues that the government's notice of opposition to dismissal constitutes a "veto power" that "conclusively" requires denial of Defendants' Motions to Dismiss on public disclosure grounds for claims accruing on or after March 23, 2010. *Id.* at 6-11.

5. The implications and effect of the government's Notice have not been well developed in prior cases, and have not been addressed by any cases identified to date within the Seventh Circuit. Relators' Opposition brief references only four instances when the government has filed such notices of opposition to dismissal on public disclosure grounds. ECF No. 145 at 9.

6. Because this is a nascent and developing area of the law that was raised in this case for the first time in the government's and Relators' filings on February 1, 2016, and one which is not governed by any controlling Seventh Circuit precedent, counsel for Defendants conferred with Relators' counsel on February 4, 2016 to request a brief extension of time for filing replies in further support of their Motions to Dismiss so they have adequate time to analyze this novel issue, while simultaneously responding to the other arguments raised in Relators' Opposition. The current deadline for Defendants' reply briefs is February 22, 2016. Relators' counsel do not oppose an extension of the deadline for reply briefs to March 7, 2016.

7. At the suggestion of Relators' counsel (after consultation with counsel for the government), and in order to provide the parties and the United States an adequate opportunity to address any arguments relating to this novel issue that may inform the Court's analysis about the dispositive nature of Defendants' public disclosure arguments, Defendants also request that the Court permit supplemental briefing on issues relating to the "veto" issue, in the event one or more of the Defendants challenge the Government's exercise of its authority to object to a dismissal on public disclosure grounds. Defendants therefore propose briefing on issues relating to the "veto" issue according to following deadlines:

Defendants' replies in support of motions to dismiss: **March 7, 2016**

Response by Defendants (if any) to the government's Notice and Relators' argument concerning the government's so-called "veto power": **March 7, 2016**

Response by the United States and/or Relators (if any) to any Defendants' brief concerning the government's so-called "veto power": **April 11, 2016**

Defendants' reply (if any) to United States' response brief concerning the government's so-called "veto power": **April 28, 2016**

8. Good cause exists for amending the current briefing schedule to briefly extend the deadlines for Defendants' Motion to Dismiss reply briefs and to permit briefing on the "veto" issue. Specifically, the issue is novel and there is not controlling precedent in this Circuit and indeed there exists very little case law throughout the rest of the country on this issue. Additionally, the issue did not arise until the February 1 filing of the government's Notice and Relators' Opposition. As a result, neither Defendants nor the government have had an opportunity to brief this issue, and in the absence of the proposed briefing schedule the parties and the government will not have an adequate opportunity to respond to the other's position.

WHEREFORE, for the reasons set forth above, Defendants request that the Court enter the proposed amendment to the briefing schedule as set forth in Paragraph 7 of this Motion. A proposed order is attached to this Motion.

Dated: February 9, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby attest that a copy of the foregoing document will be sent through the Court's ECF system to counsel of record for all parties registered on the Court's ECF filing and service system, and by U.S. First Class Mail on this date to those who are indicated on the Notice of Electronic filing as not registered on the ECF system.

Dated: February 9, 2016

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